

GRANT AGREEMENT

This Grant Agreement ("Agreement") is made and entered into this the _____ day of _____, 2011 between the City of Durham, North Carolina, a municipal corporation, organized and existing under the laws of the State of North Carolina, whose address is 101 City Hall Plaza, Durham, North Carolina (the "City") and Housing for New Hope, Inc., a non-profit corporation incorporated in North Carolina and having an office at 18 West Colony Place, Suite 250, Durham, NC 27705 ("HFNH" or "Contractor").

WHEREAS, the City has entered into an Agreement to receive funds under the HOME Investment Partnerships Program (hereinafter called the "HOME" Program) from the US Department of Housing and Urban Development (hereinafter called "HUD"); and

WHEREAS, the City and HFNH have entered into this Agreement in order to provide HFNH with funding for the purpose of renovating the multi-family building located at 1103 East Oak Drive, Durham, NC 27712 as such funding is permissible under 24 CFR 92.206(d)1;

WHEREAS, the City desires to provide financing to HFNH to assist it with its efforts of providing affordable housing to low and moderate income families throughout the City of Durham;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

A. DEFINITIONS:

Except to the extent modified or supplemented by this Agreement, any term defined in 24 CFR Part 92 shall have the same meaning when used herein.

- (1) "Agreement" means this agreement, the approved application for HOME assistance (including cover letters, maps, schedules, award letters prior and subsequent to this funding agreement, and other submissions in the approved application), and any subsequent amendments to this Agreement.
- (2) "Assistance" or "Grant" means the funds provided under this Agreement.
- (3) "Program" or "Project" means the affordable housing program or project, including the administration thereof, for which assistance is being provided under this Agreement.

B. USE OF HOME FUNDS:

- (1) HFNH shall perform the projects or tasks related to its allocation of HOME funds according to the schedule and within the budget outlined in Attachment A, entitled, "Scope of Services." Attachment A is hereby made a part of this Agreement.

C. DURATION OF THE AGREEMENT:

The City agrees to provide to HFNH HOME Investment Partnerships Program ("HOME") Assistance under Title II of the National Affordable Housing Act of 1990 as described in this Agreement. This Agreement will remain in effect until December 31, 2012.

D. SCOPE OF SERVICES:

Project funds will be used for the services as specified in Attachment A.

E. AMOUNT OF ASSISTANCE:

The City shall make available to HFNH up to the maximum amount of **Two Hundred Eleven Thousand Two Hundred and Fifty (\$211,250.00)** pursuant to this Agreement. Said funds shall be disbursed by the City to HFNH for performance of the services specified in Attachment A.

F. OBLIGATIONS OF HFNH

- (1) HFNH shall comply with all applicable regulations outlined in 24 CFR Part 92, and all applicable lawful requirements of the City, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable statutes, laws and Executive Orders currently or hereafter in force.
- (2) HFNH shall assume responsibility for: (i) managing the day-to-day operations of its HOME program to assure compliance with program requirements outlined in 24 CFR Part 92; and (ii) taking appropriate action when performance problems arise.
- (3) HFNH shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 or 92.254 as applicable, and agrees to repay the outstanding balance of its HOME funds remaining to the City if the housing does not meet the affordability requirements for the specified time period.
- (4) HFNH shall spend its total allocation of HOME funds under this Agreement on eligible activities by December 31, 2012.

- (5) HFNH shall submit a project completion report to the City no later than 60 days after the final drawdown request for HOME funds under this Agreement.
- (6) HFNH shall comply with all applicable uniform administrative requirements as described in 24 CFR Part 92.505.
- (7) HFNH shall carry out each activity in compliance with all federal laws and regulations described in 24 CFR Subpart H, including the environmental review in 92.352.
- (8) HFNH shall assume affirmative marketing responsibilities in accordance with 24 CFR Part 92.351.
- (9) HFNH shall return to the City any unobligated HOME funds on hand at the expiration of the Agreement.
- (10) HFNH shall be responsible for complying with the provisions of this Agreement even when HFNH designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required by this Agreement, and any such assignment or contracting of third parties to perform all or any portion of this Agreement's responsibilities shall be approved in writing and in advance by the City's Director of the Department of Community Development ("DDCD").
- (11) HFNH shall comply with all lawful requirements of the City necessary to insure that the program is carried out in accordance with HFNH's certifications including the certifications of assumption of environmental and labor standard responsibilities specified in 24 CFR Part 92.
- (12) The assistance provided under this Agreement shall not be used by HFNH to pay a third party to lobby the City for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the City required under this Agreement. HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs, and in accordance with Attachment A.
- (13) HFNH shall reimburse the City for any amount of HOME funds determined by the City to have been improperly expended.
- (14) If applicable, HFNH shall abide by the conditions prescribed in 24 CFR Part 92.257 for the use of HOME funds by religious organizations.

G. RECORDS AND REPORTS:

- (1) HFNH shall maintain and make available all records, information and reports reasonably requested by the City, or of assistance to the City in meeting its internal and federally mandated record keeping and reporting requirements in accordance with 24 CFR Part 92.508. Such records and accounts shall include all property, personnel, and financial records the City and Federal agencies deem necessary, in their sole determination, to assure a proper accounting for all HOME Program funds.
- (2) HFNH shall provide the City with all information that the City may reasonably require, including information for the City to complete the Consolidated Annual Performance and Evaluation Report ("CAPER") and other reports required by HUD.
- (3) HFNH shall provide an annual audit report performed in compliance with OMB Circular A-133.
- (4) HFNH shall allow the City to conduct monitoring and evaluation activities as determined necessary by the City and HUD.
- (5) HFNH shall keep a fully executed copy of this Agreement and a copy of the HOME regulations on file in their place of business at all times.
- (6) HFNH agrees to repay, remit or return to the City any amount of remaining HOME funds provided under this Agreement, if the City determines that HFNH does not have the capacity to carry out its HOME program on schedule or in a timely manner. The City shall provide a written determination of its finding to HFNH ten days prior to the request to remit, return or repay the HOME funds.
- (7) HFNH shall provide any duly authorized representative of the City, the Department of Housing and Urban Development and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the HOME grant and the fulfillment of this Agreement for a period of five years following the completion of all closeout procedures with respect to HOME funds, and the final settlement and conclusion of all issues arising out of the HOME grant.

H. PAYMENT:

- (1) HFNH shall request disbursement of HOME funds only for reimbursement of eligible expenditures made or eligible expenses incurred by HFNH, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City.

All expenditures and expenses shall be incurred in accordance with the provisions of the Agreement. Payments shall only be made after HFNH has presented documentation of expenses that meet City approval. It is expressly understood and agreed by HFNH that payment by the Grantee will not exceed the maximum sum of **\$211,250.00** for services specified in Attachment A. HFNH understands and agrees that any payment made under this Agreement by the City is limited to funds made available under the grant referenced above. The City shall make payments upon receipt of a request for check from HFNH, documentation of expenditures and any other documentation that the DDCCD may reasonably require from HFNH. All documentation required of HFNH under this Agreement shall be in such form and substance as is satisfactory to the DDCCD. Payments shall be made only for the activities specified in Attachment A. Check requests for reimbursable expenses will be processed by the City for payment no more often than monthly, until all such grant funds have been expended or until this Agreement has expired, whichever shall come first.

- (2) The total sum of HFNH reimbursements during the term of the agreement shall not exceed the amount of the agreed upon budget appearing in Attachment A.
- (3) HFNH shall submit monthly reports to the City within seven business days following the closure of the month for which the activity is being reported. HFNH shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by HFNH in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to HFNH of part or all of HFNH's request for funds. A delay in making a disbursement by the City to HFNH does not change the time required of HFNH to submit reports to the City.

I. CONFLICT OF INTEREST:

- (1) No employee, agent, consultant, officer, elected official or appointed official of the City of Durham who has responsibilities related to the HOME Program or access to information concerning said program shall obtain a financial benefit or interest from any HOME Program activity for themselves or those with whom they have family or business ties during their tenure, and for one year thereafter.
- (2) HFNH shall make a good faith effort to enforce this provision with regard to its employees and ensure that its employees do not participate in conflicts of interest or self-dealing as defined by applicable HUD regulations and the provisions of this subsection I. Any suspected violations shall be promptly reported to the DDCCD.

J. DEFAULT:

- (1) HFNH shall have sixty (60) days after receipt of the written notice of default within which to cure such default.
- (2) HFNH agrees to repay, remit or return to the City any amount of unspent HOME funds provided to HFNH in the event of a default under the terms of this Agreement.

K. SUSPENSION OR TERMINATION:

- (1) The City may suspend or terminate this Agreement, in whole or in part, if HFNH materially fails to comply with any term of this Agreement, or with any of the laws, regulations or provisions referenced herein, and as they may be amended from time-to-time during the term of this Agreement.
- (2) In the event there is probable cause to believe HFNH is in noncompliance with any applicable laws or regulations, the City may withhold HOME funds until such time as HFNH is found to be in compliance by the City, or is otherwise determined to be in compliance.
- (3) The City shall advise HFNH in writing of what actions must be taken for resumption of payments, if the non-compliance or breach may be remedied by actions by HFNH.
- (4) Termination due to adverse environmental impact. This Agreement is conditioned on the City's determination to proceed with, modify or cancel its Grant based on the results of a subsequent environmental review. This Agreement may be terminated by the City or HFNH at the conclusion of the environmental review process if the results of the review indicate that the project could have a significant adverse impact on the environment, or if preexisting environmental contamination is found, and this impact or contamination cannot be feasibly and cost-effectively eliminated or mitigated.

L. INDEMNIFICATION:

To the maximum extent allowed by law, HFNH shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of HFNH or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," omissions HFNH shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses,

demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding HFNH. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of HFNH under this contract. (e) Limitations of HFNH's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require HFNH to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

N. MISCELLANEOUS PROVISIONS:

- (1) When any notice or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To City:

Director, Department of Community Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
919-560-4570
919-560-4090 fax

To Grantee:

Executive Director
Housing for New Hope, Inc.
18 West Colony Place, Suite 250
Durham, NC 27705
919-489-6282
919-489-6593 fax

IN WITNESS WHEREOF, the City of Durham and Housing for New Hope, Inc. have caused this Grant Agreement to be duly executed all as of the day and year first above written.

CITY OF DURHAM

By: _____

Thomas J. Bonfield, City Manager

ATTEST:

CITY OF DURHAM

_____ City Clerk

Housing for New Hope, Inc.

By: _____

Terry Allebaugh, Executive Director

ATTEST:

Secretary

(Affix corporate seal here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the ____ day of _____, 2011.

My Commission Expires: _____

Notary Public

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is the _____ Secretary of Housing for New Hope, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its Executive Director, whose name is Terry Allebaugh, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the ____ day of _____, 2011.

My Commission Expires: _____

Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

City's Finance Officer

Date

ATTACHMENT A

Scope of Services

HFNH will renovate an existing apartment building consisting of ten units at 1103 East Oak Drive. Along with a Neighborhood Stabilization Program (NSP) grant and a loan from Self-Help, the HOME funds provided under this and a prior NSP grant from the City will be used to renovate the building. Upon completion, all ten units will be marketed and rented to households earning 50% or below the area median income, which shall be computed in accordance with the HUD regulations for determination of Section 8 eligibility, as those may be revised from time-to-time. A Declaration of Restrictive Covenants imposing a Period of Affordability for twenty (20) years will also be attached to the property before the renovation of the building begins.

Before beginning construction, HFNH must submit a schedule of values to include a line item breakdown of the project costs and a copy of all applicable permits to the City. Upon receiving written notice to proceed from the City, HFNH will begin the renovation of the building. Based on the approved schedule of values, HFNH will submit construction draw requests on a City- approved application and certification for payment form, and each request must be in such form and with such documentation as may be reasonably required by the City, approved by the project architect and the Director of the Department of Community Development (DDCD). Funds may be shifted between the line items of the schedule of values with prior written approval of the DDCD only to the extent that such a action does not result in a change in the scope of work and so long as it does not exceed 10% of the line item total form which the funds are being removed or to which the funds are added. Prior to disbursement of HOME funds from the City, all NSP funds designated for the project shall have been exhausted, with the exception that the City may have retained an amount from the NSP grant equivalent to five (5) percent of all construction draws until the certificates of occupancy are issued.

If for any reason HFNH does not complete the renovation of all ten units within eighteen (18) months of the commencement of this Contract, or for any other breach of this Contract's terms, the City shall have the right, at the City's election: (i) to recapture from HFNH the amount of funds provided for the renovation of the property; (ii) to have a deed of trust encumbering the parcel and any improvements constructed thereon provided to the City by HFNH, noting the entire amount of funds provided by the City under this Contract as the secured amount and with the City as the beneficiary; or (iii) have HFNH provide a deed to the parcel and all improvements to the City or to an entity of the City's choosing. Completion of construction shall be defined as the date by which a certificate of occupancy has been issued for the building. Specification of a remedy in this paragraph shall be supplementary to all other remedies at contract, law or in equity which the City may exercise.